

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 282 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
-

STATE OF GUJARAT & 1

Versus

JAYSUKHLAL B JOISAR

Appearance:

MR UR BHATT ASST.GOVERNMENT PLEADER for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/09/2000

ORAL JUDGEMENT

This appeal is filed under Sec.104(1) of the Civil Procedure Code, 1908 read with Order 43 R. 1(r) of the Civil Procedure Code, 1908 by original defendants of Special Civil Suit No. 165 of 1991 pending on the file of learned Civil Judge (S.D.), Jamnagar (who will be referred to hereinafter as the learned Judge of the trial Court), challenging the legality of an order dt. 22/7/1994 passed below application Ex.41 being application under O. 39 R. 2(A) of the Civil Procedure Code, 1908 and also an order of the same date passed below application Ex.46 being an application under O. 39

R. 1 and 2 of the Civil Procedure Code 1908. It appears from record that the learned Judge of the trial Court has passed a common order dt. 22/7/1994 by which said Ex.41 and Ex.46 have been disposed of by that common order.

2. When this appeal was taken up for final hearing, the learned advocates for both the parties submitted jointly that reasoned order may not be passed in this appeal but an order be passed giving suitable directions to the learned Judge of the trial court to dispose of Special Civil Suit No. 165 of 1991 within some reasonable period, pending on his file. Under the circumstances, this appeal is disposed of finally without assigning any reasons as prayed for by both the parties.

3. When this matter was taken up for admission on the point of interim relief, this Court (Coram: Y.B.Bhatt, J.) passed following order in Civil Application No. 3626 of 1994 in the present matter :

" ORDER

Heard learned counsel for the parties.

The common order passed below Exhs. 41 and 46 dated 22nd July, 1994 is stayed and further proceedings in respect of the plaintiff's application Ex.41 are also stayed, on condition that the applicant deposits in the trial court a sum of Rs. 1,70,000/- within six weeks from today. On the deposit being made, the plaintiff shall be entitled to withdraw the same on furnishing security to the satisfaction of the trial court.

It is clarified that inspite of the aforesaid stay granted by this court, the parties are at liberty to work out by mutual consent the modalities of implementation, in substance and in spirit, of the directions given by the trial court in Para 9 of the impugned order.

Sd/-

(Y.B.BHATT,J.)"

4. Having heard the learned advocates for both parties and after considering the grounds of attack for challenging a common order dt. 22/7/1994 by which Exs.41 and 46 have been disposed of, this court deems fit, proper and justifiable to give following certain directions to the learned Judge of the trial court without discussing anything about merits or demerits of

the case:

- (i) The learned Judge of the trial court shall dispose of Special Civil Suit No. 165 of 1991 which is on the stage of delivery of judgment as stated by Mr. Uday R. Bhatt, learned AGP, at the earliest without any further delay, preferably within three months from the date of receipt of writ of judgment of this court.
- (ii) The learned Judge of the trial court shall dispose of Special Civil Suit No. 165 of 1991 as per above directions without being influenced by this order.
- (iii) The order dt. 01-09-1994 passed by this Court (Coram: Y.B.Bhatt, J.) in Civil Application No. 3626 of 1994 shall remain effective and operative till final disposal of the suit.

Accordingly this appeal stands disposed of in terms of above directions. No order as to costs.

Date: 5/9/2000. (H.H.MEHTA,J.)

ccshah